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**From:** [REDACTED]

**Sent:** Friday, February 27, 2015 12:21:45

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** Tribal General Welfare Exclusion Act, POSTU-105138-15, input on initial refund issues

Dear ,

Following is our tentative conclusion on the questions involving refund statute of limitations and amounts available for credit or refund for this Act. We can be more definitive once ITA has provided their opinions.

Section 2(d)(1) of P.L. 113-168, 128 Stat. 1884, the Tribal General Welfare Exclusion Act (the Act), provides a general rule that this statute applies to taxable years for which the period of limitation on refund or credit under § 6511 has not expired. Presumably, this means has not expired as of the date the statute was enacted, September 26, 2014.

Section 2(d)(2) provides a one year statute of limitations waiver, stating that if the period of limitation on credit or refund resulting from this statute expires before September 26, 2015, refund or credit of the overpayment resulting from the statute may be allowed if a claim is made by September 26, 2015.

Section 6511(a) provides a “period of limitation on filing claim” and requires that a claim be filed within the later of 3 years from the return filing date or 2 years from the time the tax was paid; or, if no return was filed, within 2 years from the payment date.

Section 2(d)(2) of the Act operates to extend the statute of limitations for filing a claim for refund or credit for any tax years that were open on September 26, 2014, so for any such open year a claim will be considered timely if filed by September 26, 2015.

While § 6511(a) and Act § 2(d)(2) address the timeliness of refund claims, § 6511(b) addresses what payments are refundable or creditable, providing in § 6511(b)(1) that a timely refund claim is a prerequisite to providing a credit or refund.

The Act only addresses extending the statute of limitation on filing a claim and only addresses which refund claims are timely. It does not address what payments may be

refundable on the date the taxpayer submits the claim. Section 6511(b)(2) provides limits on the payments that may be refunded or credited, and nothing in the statute overrules the usual limitation for these claims. Accordingly, even though a refund claim may be timely on September 26, 2015, it would only reach payments made within 3 years of the claim plus the period of any filing extension, and then only if the actual claim filing date were within 3 years of the return filing date; but if the actual claim filing date were more than 3 years after the return filing date, then the refund or credit would be limited to those payments made within 2 years of the claim filing date, even though the Act may have made the refund claim itself timely.

While we recognize that an argument can be made that Act § 2(d)(2) opens the period for claiming a refund even for years that were closed on the date of enactment, that interpretation would contradict the plain language of Act § 2(d)(1), which is disfavored in statutory construction. Moreover, the first sentence in the penultimate paragraph of Rep. Nunes' floor statement says that the Act is effective for tax years with an open refund period on the enactment date. The second sentence then promises that taxpayers will have an additional year after enactment to claim a refund "with respect to any such open year." The "such" in the second sentence refers back to the open years in the first sentence and, like the statute, limits the universe of timely claims to those that would have been timely on the date of enactment; i.e., years for which the refund or credit statute of limitation under § 6511(a) had not already expired as of the date of enactment.

If needed, we will provide more formal advice on this and other pending issues related to this Act.

Best,